

(6) On February 5, 2007, the petitioner filed objections to the Report and Recommendations of the Magistrate Judge;

(7) In his objections, the petitioner states that he has no problem with his motion for stay being denied, but objects to the recommendation that the petition be dismissed. Petitioner then withdraws the unexhausted claims raised in his second state P.C.R.A. petition;¹

IT FURTHER APPEARING THAT:

(8) In *Rhines v. Weber*, *supra.*, the Court held that the district court should allow a petitioner to delete the unexhausted claims and proceed with the exhausted claims if dismissal of the entire petition would unreasonably impair the petitioner's right to obtain federal relief;

(9) Because petitioner seeks to withdraw the unexhausted claims raised in his second state P.C.R.A. petition and to proceed only with the exhausted state claims, we will remand the instant action to the Magistrate Judge for further proceedings;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated January 18, 2007 (Document 10) is **adopted** to the extent that the petitioner's motion to stay (Document 2) is **denied**; and,

(2) The instant action is **remanded** to the Magistrate Judge for further proceedings.

s/Edwin M. Kosik
United States District Judge

¹We note that in his Report and Recommendation, the Magistrate Judge states that petitioner has three unexhausted claims pending in state court. In his objections, petitioner states that he has two unexhausted claims which he wishes to withdraw. We will leave the exhaustion of claims issue to the Magistrate Judge.